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To:

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Subject: Legal Opinion -

We have reviewed the documents in this case, including the Plea Agreement and Judgment, and have concluded that the Service may process the taxpayer's submitted offer-in-compromise (OIC) which includes tax years .

IRC § 7122 authorizes the Service to compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice (DOJ) for prosecution or defense. DOJ's exclusive authority to compromise a case ends when the referred case is completed. In a criminal case, such as this case, the referral was completed when the Judgment was entered by the District Court and the time for appeal expired. Accordingly, the authority to compromise this case pursuant to section 7122 has reverted to the Service.

In a criminal tax case, the District Court may order the taxpayer to pay restitution to the United States. Restitution is not a tax but is usually ordered in an amount equal to the defendant's unpaid tax liability. The Service's policy is to credit restitution payments against the tax liability. The Service does not have authority to compromise the amount of tax liability that equals the court ordered restitution for tax years subject to the criminal proceeding.

In this case, the District Court ordered the defendant, as terms of his probation, to cooperate with the Service, submit all delinquent tax returns and pay all back taxes plus interest under the guidance and supervision of his supervising probation officer. The court did not order restitution and the probation term requiring the payment of back taxes plus interest is not the equivalent of a restitution order. Accordingly, the Service is not prohibited from processing and considering the merits of the OIC.

Based on the foregoing analysis, the OIC should not be returned to the taxpayer as submitted solely to hinder or delay collection and should be processed and considered on the merits. We offer no opinion as to whether the OIC should be rejected as not in the best interest of the United States based on public policy or other considerations.

If you have any additional questions or require further guidance, please do not hesitate to contact myself or the .